

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANIEL KLEEBERG, LISA STEIN and
AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER,
ALEXBA Y, LLC f/k/a LESTER EBER, LLC,
CANANDAIGUA NATIONAL CORPORATION d/b/a :
CANANDAIGUA NATIONAL BANK AND TRUST, :
ELLIOT W. GUMAER, JR., :
EBER BROS. & CO, INC., :
EBER BROS. WINE AND LIQUOR CORP., :
EBER BROS. WINE & LIQUOR METRO, INC., :
EBER CONNECTICUT, LLC, and :
WENDY EBER, :

Defendants.
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: Civil Action No.
: 16-CV-9517(LAK)(KHP)
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: **PLAINTIFFS' OBJECTIONS TO**
: **DEFENDANTS' TRIAL**
: **EXHIBIT LIST**

Exhibit:	Description:	Objections:	In Evidence:
D	L. Eber letters dated 03.22.2010 and 04.02.2010 to S. Kleeberg & A. Stein with paperwork requesting to invest (Ex. J to L. Eber Affidavit 11.08.2011) EB-00001671-1747	FRE 802 (Hearsay) and 901 (Authenticity) as to all handwritten letters being admitted; no objection to typed pages or enclosures	
G	Affidavit of L. Eber sworn to 03.14.2012 in support of Alexbay Article 9 Action EB-00001059-1063	FRE 802 - Object to being admitted for the truth of the matters asserted; can come in for limited purpose of showing what was said to court	

Exhibit:	Description:	Objections:	In Evidence:
P	Company ownership charts (Ex. A to W. Eber Affidavit 11.08.2019) Not Bates stamped	FRE 802. Plaintiffs do not object to using a similar chart that was not created for purposes of this litigation (Ex 11)	
X	Decision & Order dated 04.15.2005 - EWLC v. Southern Wine & Spirits of America, Inc. denying preliminary injunction (Ex. E to L. Eber Affidavit 11.08.2019)	FRCP 26, 37: Should be excluded because not disclosed during discovery	
Y-3	EB-00021579 01.04.2001 D, Kleeberg Certification of Medical Expenses	FRE 401, 403	
Y-4	EB-00033277 M. Shevlin 2007 letter re D. Kleeberg salary	FRE 401, 403	
Y-5	EB-00033278 M. Shevlin 2007 letter re D. Kleeberg health insurance	FRE 401, 403	
Y-6	EB-00033272-74 08.14.2007 Benefit Determination for D. Kleeberg	FRE 401, 403	
Y-7	DK00120 W. Eber email dated 08.29.2014 to M. Gallagher regarding D. Kleeberg's benefits	FRE 401, 403	
Y-8	EB-00026295 D. Kleeberg email dated 12.17.2007 to L. Eber regarding Benderson	FRE 401, 403	
Y-9	EB-00021716 \$15,000 Promissory Note from Eber Metro to D. Kleeberg	FRE 401, 403	
Y-10	EB-00020324 08.11.2003 letter confirming D. Kleeberg's outstanding loans to EBWL	FRE 401, 403	
Y-11	EB-00020325 08.11.2004 letter confirming D. Kleeberg's outstanding loans to EBWL	FRE 401, 403	
Y-19	EB-00001671 L. Eber 2010 letter to S. Kleeberg re investing in business	FRE 901 (same as Ex D)	
Y-22	EB-00001709 L. Eber 2010 letter to S. Kleeberg re investing in business	FRE 901 (same as Ex D)	
Y-28	CNB0000444-445 Letter to S. Kleebert seeking consent to the trust making distributions to Erica Stein	FRE 901	

Exhibit:	Description:	Objections:	In Evidence:
AA	EBWLC Certificate of Amendment and consent 02.14.2017 (Ex. C from L. Eber Affidavit 12.06.2019) EB-00001169-1173; 1166-1169; EB-00036190	Object to EB-00036190 for lack of authenticity based on Wendy's inability to recall how she "found" it, and under FRCP 26, 37 because not produced until after summary judgment, & failure to disclose either metadata or communications that would show it was not backdated by 2.5 years	
BB	EBWLC Retirement Plan restated 07.01.1994 (Ex. B. to W. Eber Affidavit 11.08.2019) EB-00035997-36072	FRE 401, 403	
DD	Hon. Michael Telesca Order dated 01.19.2016 re Plan Termination date (Ex. E to W. Eber Affidavit 11.08.2019) EB-00010502-10519	FRE 401, 403	
FF	Lester Eber-trust distributions to beneficiaries and Erica Stein (Ex. D to L. Eber Affidavit 11.08.2019) EB-00001135-1136; 1671; 1073; 1074; CNB000039; EB-00030964	FRE 901 as to unsent handwritten letter (same as Ex D)	
II	Loan Ledgers 2009-2011 for Eber Metro (L. Eber loaned funds) EB-00031373-31376	FRE 802 (hearsay within hearsay)	
JJ	M. Gallagher letter dated 12.19.2018 re plan termination liability (Exhibit A from Gallagher Affidavit) EB-00035551-35552	FRE 401, 701, 802; FRCP 26, 37 because concealed until after close of fact discovery	
QQ	PBGC Demand for Payment (Ex. D to W. Eber Affidavit 11.08.2019) EB-00019009-19016	FRE 401, 403	
RR	PBGC Notice of Termination of Plan (Ex. C. to W. Eber Affidavit 11.08.2019) EB-00000790-792	FRE 401, 403	
TT	Rule 26(a) Initial Disclosures Eber Def 2017.06.16 (pleading only)	FRE 401, 802	

Exhibit:	Description:	Objections:	In Evidence:
VV	Settlement paperwork 10.23.2015 Harris Beach and Eber companies (Ex. P to L. Eber Affidavit 11.08.2019) EB-00017510-17544	Object to Dalton Affidavit FRE 802; Object to stealth inclusion of Lester Eber Affidavit from litigation in addition to the settlement described. FRE 802	
XX	Summary of Lester's payments EB-00020333	FRE 802, 602, 701	
ZZ	Wolf Concept Settlement 06.30.2011 EB-00032761-32774	FRE 401, 403	
GGG	EB-00017819-8057 2013 Eber CT Valuation	Object to this compilation exhibit as 239 pages of disorganized and disconnected documents, many of which are duplicates of other exhibits	
SSS	EB-00026433-4 1.4M loans from EBWL to Metro	Rule 602; 802 (not business record because different than other accounting records); 901	
CCCC	Letters to Wendy Eber from Lester Eber dated 2.13.2007 and 6.1.2007	FRCP 26, 37 because not produced in discovery, not until 9/3/2021	
DDDD	PBGC Scratch Pad and 1/10/14 e-mail referred to in Hon. Telesca's Order	No objection to 1 st page; objection to 2 nd page if it is offered for purpose of showing an actuarial calculation of some kind	
GGGG	PBGC Complaint for Pension Plan Termination, EB-00023424-23431	FRE 401, 403	
JJJJ	Accord and Satisfaction Agreement with New York State Teamsters Conference Pension & Retirement Fund, EB-00023106-23112	FRE 401, 403	

Exhibit:	Description:	Objections:	In Evidence:
NNNN	Eber Bros. Wine & Liquor Retirement Plan Financial Statements for 2012 and 2011 and Independent Auditors' Report	FRCP 26, 37 because not disclosed until 9/3/2021; FRE 401, 403, 802	
ZZZZ	Employee Notice-WARN NOTICE	FRCP 26, 37 because not disclosed until 9/3/2021	
BBBBB	Working Restatement of the Eber Bros. Wine & Liquor Corp. Retirement Plan as Restatement 6/1/94 through Amended No. 15	FRCP 26, 37 because not disclosed until 9/3/2021; FRE 401, 403	
CCCCC	Actuarial Valuation Report for the Eber Bros. Wine & Liquor Corp. Retirement Plan Year ended May 31, 2012	FRE 401, 403	
DDDDD	Eber Bros. Wine & Liquor Corp. Memo re: Retirement Plan dated October 25, 1977 and partial pages of plan	FRCP 26, 37 because not disclosed until 9/3/2021; FRE 401, 403	
JJJJJ	2013 Connecticut PBGC Lien	FRCP 26, 37 because not disclosed until 9/3/2021; FRE 401, 403	
KKKKK	Summary of Loans and Interest	Objection withdrawn based on understanding from defense counsel that it is offered only as a demonstrative	
LLLLL	Timeline	Objection withdrawn based on understanding from defense counsel that it is offered only as a demonstrative	